

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL No. 1456

Master File No. 01-CV-12257-PBS

THIS DOCUMENT RELATES TO:
ALL ACTIONS

Judge Patti B. Saris

AFFIDAVIT OF AGNES SWAYZE

I, Agnes B. Swayze, pursuant to 28 U.S.C. §1746, on oath, depose and state as follows:

1. My name is Agnes B. Swayze and I live in Lancaster, California. I have personal knowledge of the facts stated below.

2. I am the Class 1 representative against BMS in this lawsuit. I stepped forward to be a Class 1 representative in June, 2007 and was formally appointed by the Court as a class representative on August 31, 2007.

3. I am currently 76 years old.

4. I suffer from ovarian cancer. I was treated extensively for this cancer in 1994 and again in late 2002 and early 2003.

5. As part of my chemotherapy treatments, I received injections of the BMS drug Paraplatin (BMS's brand name for carboplatin, J Code J9045) on at least the following dates: December 10, 2002; December 30, 2002; January 20, 2003; February 7, 2003; and March 7, 2003.

6. As part of my treatment, I also received injections of the BMS drug Taxol (BMS's brand name for paclitaxel, J Code J9265) on the following dates: December 10, 2002, December 30, 2002, January 20, 2003, February 7, 2003 and March 6, 2003.

7. I received my chemotherapy injections at either my doctor's office, Valley Tumor Medical Group, or my local hospital, Lancaster Community Hospital. Billing records from my doctor and the hospital evidencing these injections are attached hereto as Exhibit 1, showing the December 10, 2002 injections; Exhibit 2, showing the December 30, 2002 injections; Exhibit 3, showing the January 20, 2003 injections; Exhibit 4, showing the February 7, 2003 injections; and Exhibit 5, showing the March 6 and 7, 2003 injections. I understand these records have been redacted to hide other drugs I received as part of the same office visits.

8. Attached as Exhibit 6 is a copy of pages from a Medicare Explanation of Benefits relating to my injections of March 7, 2003. This EOB is dated March, 2007, because that is when I requested information from Medicare. I requested information so I could submit a claim in the GSK settlement, as I also received GSK's Zofran (ondansetron) as part of my chemotherapy treatments. I filed a claim and received payment as a Class 1 Medicare beneficiary in the GSK settlement.

9. Attached hereto as Exhibit 7 is a copy of my claim form for the BMS Class 1 settlement that the Settlement Administrator provided me. This form lists my drug purchases as taken from CMS records. Note that the CMS records match the dates identified in my doctor and hospital records in Exhibits 1 through 5.

10. I have returned my claim card in the BMS Class 1 settlement and affirmed that I made, or was obligated to make a co-pay for BMS drugs at issue, and did not have supplemental insurance at the time. A copy of my signed Claim Card is attached as Exhibit 8.

11. As further proof that I was administered the BMS drugs in question, I attach as Exhibit 9 a copy of two pages of my doctor's notes to my file. Specifically, the February 19, 2003 note states that "Miss Swaze (sic) has ovarian carcinoma and received Paclitaxel and

Carboplatin on February 7, 2003”, and Dr. Shamasundar’s note of December 17, 2002 in which he states “the patient was treated with Taxol and Carboplatinum in the office.”

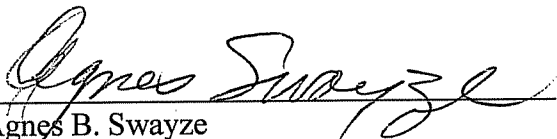
12. At all relevant times, I was covered by Medicare, but have no supplemental, Medi-Gap or other medical insurance. I paid all my medical bills, including my Medicare co-pays, either by cash, check or credit card and did so for the administrations of BMS’s Taxol and Paraplatin.

13. I have been very active participant in this litigation. Since June, 2007, I have communicated with my counsel, John Macoretta, on a regular basis about the status of the litigation and the settlements. We have communicated by telephone, email and letter. Mr. Macoretta also met with me at my home in California in June, 2007.

14. I was kept apprised of the status of the case and of settlement negotiations. I discussed the proposed settlement with my lawyer, including the risks of further litigation.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Date: April 7, 2011


Agnes B. Swayze

Exhibits 1-9

[Filed Under Seal]